

PRIORITY SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



CIVIL MINUTES -- GENERAL

Case No. EDCV 11-00866VAP (DTBx)

Date: July 21, 2011

Title: BARBARA MCMULLIN -v- JP MORGAN CHASE, et al.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFFS:

None

ATTORNEYS PRESENT FOR
DEFENDANTS:

None

PROCEEDINGS: MINUTE ORDER: (1) VACATING AUGUST 8, 2011,
HEARING; and (2) GRANTING DEFENDANT JP MORGAN
CHASE'S MOTION TO DISMISS

The Court has received the papers filed in support of Defendant JP Morgan Chase's ("JP Morgan" or "Defendant") motion to dismiss ("Motion"). (Doc. Nos. 8 (Motion), 9 (Request for Judicial Notice).) Defendant's Motion is appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. The Court accordingly VACATES the hearing set for August 8, 2011, at 2 p.m.

Plaintiff Barbara McMullin ("Plaintiff") filed this action on May 4, 2011 against Defendant JP Morgan and First American Title Insurance Company ("First American") in the Superior Court for the County of Riverside. (See Doc. No. 1 (Not. of Removal), Ex. A (Complaint).) Plaintiff alleges the following claims: (1) violation of California Civil Code section 2923.5, (2) fraud, (3) intentional misrepresentation, (4) violation of California Civil Code section 2923.6, (5) violation of California Civil Code

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section 1572, (6) violation of California Business & Professions Code section 17200, and (7) violations of the Truth in Lending Act ("TILA"). (Compl. at 1.) On June 3, 2011, Defendant JP Morgan removed the action to this Court on the basis of federal question jurisdiction. (Not. of Removal at 1.)

Under Local Rule 7-9, a party must file opposition papers no later than 21 days before the date designated for hearing the motion. As the hearing on Motion is set for August 8, 2011, Plaintiff , appearing pro se, was required to file opposition papers no later than July 18, 2011. Plaintiff has not filed opposition papers. Under Local Rule 7-12, the Court finds Plaintiff accordingly has consented to granting the Motion and accordingly DISMISSES Plaintiff's Complaint as to Defendant JP Morgan, without prejudice. See L.R. 7-12 ("The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion.").

Additionally, Plaintiff has not yet served Defendant First American. Under Federal Rule of Civil Procedure Rule 4, a plaintiff must serve the summons and complaint on all named defendants within 120 days of filing, and failure to do so will result in dismissal of the action against the unserved defendant. See Fed. R. Civ. P. 4(m) ("If a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant") (emphasis added). Plaintiff filed this action on May 4, 2011, and accordingly must serve Defendant First American by September 1, 2011. Failure to do so will result in dismissal of the Complaint.

IT IS SO ORDERED.